No: 2021-45

Date:14/04/2021

Subject: **Note On Product Safety And Technical Regulations Law No. 7223**

The Product Safety and Technical Regulations Law No. 7223 ("**Law**"), which was published in the Official Gazette dated March 12, 2020 and regulated to enter into force 1 year after its publication, entered into force on March 12, 2021. Since the Law No. 4703 on the Preparation and Implementation of Technical Legislation on Products can no longer meet the needs arising from technologic developments and that the sanctions and measures it stipulates are insufficient and also for the purpose of compliance with the European Union legislation, the Law No. 7223 has been prepared in line the relevant Directives of the European Union.

In this Note, we will briefly explain this -Law and the new provisions it has brought to Turkish Law.

## 1. Purpose and Scope of the Law

As stated in its first article, the purpose of the Law is to ensure that the products are safe and comply with the relevant technical regulations, to regulate the principles of market surveillance and control, to determine the duties of the authorized institutions and the obligations of commercial enterprises[1] and also conformity assessment bodies.

The Law actually regulates the issues related to “product safety” and “product liability” together.

The Law **covers all products** that are supplied or intended to be supplied to the market, placed on the market or put into service. Products that are exported or intended to be exported to EU member countries are also deemed to have been supplied to the market and therefore fall within the scope of the Law. If there is a special law regarding a product, the provisions of the Law will be applied to that product in cases where there is no provision in the special law. It should be mentioned that **provision of services is excluded** from the scope of the Law.

Although the products exported or intended to be exported to countries other than EU member countries are outside the scope of the Law, the Law includes a provision on the matter and states that these products shall be also safe, shall not subject to adulteration and that marking, labeling and certification of such products shall be done in a way that is not

[1] In the law, a commercial enterprise is defined as manufacturer, authorized representative, importer, distributor or other real or legal person who has liability for the production, placing on the market or putting into service within the scope of the relevant technical regulation.

misleading to the buyer. With this provision, it is aimed to prevent practices that damage the trust in products made in Turkey abroad.

## 2. Product Safety

As per the Law, **the products must comply with the technical regulation**. The product is defined as any substance or material in the Law.

The obligation to comply with the technical regulations also **applies to used products** that have been re-offered or intended to be re-offered to the market after being altered, and **old and used products** imported from countries other than the EU member countries.

Technical regulations will be prepared and implemented by the authorized governmental institution in accordance with the procedures and principles specified in the Law. Until the said technical regulations to be prepared within the framework of the Law are prepared, the provisions of the technical regulations that were put into effect in the time of the Law No. 4073, which do not contradict to the Law, will be applied.

The products manufactured in accordance with the provisions of the relevant technical regulation on human health and safety will be considered **safe** unless proven otherwise.

The Article 5 of the Law states that in cases where there is no technical regulation or where the technical regulation does not contain provisions regarding human health and safety, the assessment of whether a product is safe or not will be made according to the general product safety legislation. In this context, the General Product Safety Regulation prepared by the Ministry of Trade entered into force on March 12, 2021.

## 3. Product Liability and Indemnity

As the Law specifically regulates “product liability”, it has filled the gap in the Turkish legislation on this issue. As per the Law, **the manufacturer and importer of the relevant product are liable** for the damages caused by the non-conforming product. We should also mention that the definition of “manufacturer” under the Law includes not only those who manufacture the products, but also real or legal persons who have the products designed or manufactured by third parties and put them on the market under their own name or trademark. The liability regulated here is strict and joint liability. **If the manufacturer or importer cannot be determined**, the **distributor**[2] of the relevant products **will be held liable**.

It should be noted that in order for the manufacturer or importer to be held liable, the injured party **must prove the damage suffered and the causal link** between the damage and the non-conformity of the product. In the Law, the concept of **non-conforming product** is used instead of the "faulty" or "defective" product, which is generally used in the Turkish legislation. Accordingly, what should be understood from the “non-conforming product” is that the

2 According to the law, every person except the manufacturer and importer who takes the product in the supply chain and keeps the product in the market is considered a distributor.

product does not comply with the relevant technical regulation or general product safety requirements.

Under the Law, **not only consumers but any real/legal person** who suffers damage **is entitled to claim compensation** for the non-confirming product. Accordingly, **all real and legal persons who suffered a damage caused by the product will be able to claim compensation even if they are not a party to any legal transaction with any manufacturer, importer or distributor related to the product**.

It should be noted that the Law clearly states that **it is not possible for the manufacturer or importer to limit or abolish the liability for compensation by concluding any kind of limitation of liability agreement**.

The relevant provisions of the Turkish Code of Obligations will be taken into account in the calculation of the compensation to be paid. It should be stated the Law does not envisage any limitation or distinction in terms of damages to person or property or material or moral damages in relation to the compensation to be paid.

Finally, it should be mentioned that **the statute of limitations for the compensation request** by the injured person is **three years** from the date the injured person becomes aware of the damage and of the liable person, and in any case, **ten years** from the date of the damage.

**4. Relief from Liability**

The legislator, after regulating the provisions on product liability mentioned above, has also **listed the cases where the liability** of the manufacturer and importer who may be subject to compensation claims **will be lifted and no compensation payment will be required**. Accordingly, the manufacturer and importer will the relived from liability if it proves that;

**(i)** it did not put the product on the market itself,
**(ii)** the non-conformity is caused by the intervention of the distributor or of a third party or the user,
**(iii)** the non-conformity of the product is caused by the production made in accordance with technical regulations or other mandatory technical rules.

Further, if the damage is caused due to the failure of the damaged person or a person under the responsibility of the damaged person in addition to the non-conformity of the product, the liability of the manufacturer or importer may be reduced or removed completely depending on the circumstances. On the other hand, in cases where the damage is caused by the act or negligence of a third party in addition to the non-conformity, the compensation liability of the manufacturer or importer will not decrease and remain as it is, and in such a case, the manufacturer or importer will have the right of recourse to such third party.

**5. Obligations of the Manufacturer, the Importer and the Distributor**

The Law includes detailed provisions, in separate articles, on the obligations of the manufacturer and the importer, who have **primary liability** due to product liability, as well as the distributor with secondary liability.

The manufacturer is responsible for ensuring that the product complies with technical regulations and is safe, and this responsibility continues after the product has been sold and

taken over by the end user. The involvement of the importer or distributor between the manufacturer and the person purchasing the product does not change the manufacturer's obligations.

The importer, who is the person who imports the product and puts it on the market, can only supply safe products to the market and products that are in accordance with the relevant technical regulation. It should be noted that, in the same way as the manufacturer, the importer is obliged to indicate its name, registered trade name or brand and full address on the product.

As for the distributor, it must make sure that the manufacturer or importer of the product fulfills its obligations before supplying the product to the market. In addition, it is obliged to cooperate with the authorized institutions and to follow the instructions promptly in cases where the product is not in accordance with the relevant technical regulation or is not safe. In cases where the manufacturer, authorized representative or importer of the product cannot be determined, the distributor shall be required to share the name and contact information of the manufacturer, authorized representative or importer within 10 days starting from the written notification of the authorized institution with such institution. If the distributor does not have this information, the name and contact information of the previous commercial enterprise in the supply chain must be notified to the authorized institution. Otherwise, the distributor will be considered and treated as a manufacturer.

**6. Market Surveillance**

The Law obliges every commercial enterprise that has the product on the market to **keep a regular record of the name, trade name or brand and contact information of the previous and the next (if any) commercial enterprise in the supply chain** and other information that will facilitate the follow-up of the product. This information will be saved **for 10 years** and be made available upon request of the authorized institution.

The aforementioned obligation also applies to **intermediary service providers and media service providers** such as radio and television, **who supply or keep a product on the market electronically**, and **those who provide the electronic commerce platform** for economic and commercial activities of others.

**7. Recall of the Products**

If there is a non-conforming product and if other measures taken are insufficient to eliminate the risk, the commercial enterprise **has to recall the product by its own decision or at the request of the authorized institution**. In such a case, the commercial enterprise **shall offer at least one of the following options** to the end user who delivers the product:

**(i)** remedying the problem that caused the product to be recalled,
**(ii)** payment of the retail value of the product on the delivery date, or
**(iii)** replacing the product with a safe and equivalent product that complies with its technical regulation.

**All costs related** to the recall of the product will be borne by the **commercial enterprise** and it is obligatory that the necessary conditions be met for the end user to deliver the product on time and easily without imposing an additional cost to the end user.

**8. Administrative Fines**

The Law envisages administrative fines in case of breach of the obligations stipulated thereunder. The **administrative fines vary between TL 7,000 and TL 500,000**. At this point, it should be noted that **administrative fines will not be applied** for the commercial enterprises who determine that the product they offer to the market, keep on the market or put into service is a non-conforming product and **take necessary measures**, **including the recall of the product and completely eliminate the non-conformity, without the request and warning of the authorized institution**.

* * *

In the light of the information provided above, please contact us if you have any further questions concerning the Law.

Best regards,

**Thanks to Tabak & Ongan Law Office**

Mecidiyeköy Mahallesi Şehit Ahmet Sokak Ada Residence No: 6-10/51 Kat 3 34381
**Şişli / İstanbul / TURKIA**

112 Capitol Trail, Suite A , **Newark DE 19711, USA**

+90 212 211 11 10
tax@taxia.com.tr